

KVK PARTNERSHIP

IBLA 82-665

Decided December 15, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous noncompetitive oil and gas lease application. NM 51063

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

APPEARANCES: John B. Pound, Esq., Santa Fe, New Mexico, for appellant; Robert J. Uram, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

KVK Partnership (KVK) has appealed from a decision dated March 8, 1982, by the New Mexico State Office, Bureau of Land Management (BLM). The decision rejected appellant's simultaneous noncompetitive oil and gas lease application for parcel NM-699 which was drawn number one at the public drawing held on November 16, 1981. BLM held that the application violated the requirement that a showing as to the partnership qualifications must accompany the application in the absence of a reference on the application to the serial number of a file in which this information has previously been filed and accepted by BLM.

The BLM decision stated in part:

Upon checking the qualifications file in this office, qualifications were located for KVK Partnership. The qualifications were accepted by this office on April 18, 1977 and were

given the qualification serial number NM 0558400. KVK Partnership was notified of this acceptance and the qualifications number made known to them by a letter from this office on May 11, 1977.

The application for KVK Partnership was signed by J. W. Keeran, a partner. By letter from this office dated April 5, 1977, the partnership was advised that if they did not file a statement to notify us otherwise, all offers and documents must be signed by all three partners, otherwise, offers would be incomplete and subject to rejection. The statements accepted April 18, 1977, did not contain such a statement. Therefore, the application should have contained all three partners signatures. (Regulations 43 CFR 3102.2-4(a)).

On appeal counsel for appellant argues that KVK's violation was technical in nature and therefore should not require rejection of the application. Counsel asserts that KVK complied with the applicable regulations when it submitted to BLM copies of its partnership qualifications which were later accepted. Counsel contends this distinguishes appellant's case from the case cited in the decision of BLM, Stephen A. Pitt, 57 IBLA 365 (1981), where no statement of partnership qualifications had either preceded or accompanied the application. While acknowledging that Keeran neglected to have his partners sign the application and to include the serial number where partnership qualification information could be found, counsel for appellant argues that the oversight was not serious enough to warrant rejection of the application.

The record shows that the application, dated September 21, 1981, names KVK Partnership as applicant on the face of the card. On the reverse side J. W. Keeran's name appears in the space provided for the signature of the applicant and his signature is the only one which appears on the application. No statement of qualifications for KVK Partnership accompanied the application, nor is there any reference on the application to a serial number where the information had been filed earlier.

The regulation, 43 CFR 3102.2-4 (45 FR 35162 (May 23, 1980)), 1/ requires that an application for an oil and gas lease filed by a partnership shall be accompanied by a certified copy of its articles of partnership, a

1/ On Feb. 26, 1982, the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirement to file the statement of qualifications previously required by 43 CFR 3102.2-4. 47 FR 8544 (Feb. 26, 1982). While in certain circumstances the Board may apply revised regulations to a pending matter where it benefits the affected party (see James E. Strong, 43 IBLA 386 (1980)), it is not possible to do so in this case because of the intervening rights of the second and third priority applicants coupled with the obligation to issue a noncompetitive lease only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); see Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

statement that it is authorized to hold oil and gas leases, and a complete list of all general partners showing their citizenship and identifying those authorized to act on behalf of the partnership in matters relating to Federal oil and gas leases. In the alternative, reference may be made on the application to the serial number of a file where such information has been filed for reference with BLM and accepted by BLM. 43 CFR 3102.2-1(c).

[1] As the required information was not submitted with the application nor was any reference given to any previously filed statements of qualification of KVK Partnership, it was proper for BLM to reject this application. Pirindel Investment Research, 65 IBLA 111 (1982); Stephen A. Pitt, supra; SID Partnership, 37 IBLA 165 (1978). It is true that unlike the situation in Stephen A. Pitt, supra, partnership qualifications in this case had been previously filed by appellant even though the simultaneous lease application did not reference the same as required by the regulation at 43 CFR 3102.2-1(c). However, this distinction has previously been rejected by the Board as irrelevant where the simultaneous lease application fails to reference the qualification file where the evidence has been filed as required by the regulation. Norcross Partners, 31 IBLA 181 (1977).

Furthermore, even if this defect is disregarded, appellant's application was properly rejected as the partnership agreement on file with BLM indicates that contracts must be executed by more than one partner on behalf of the partnership and this was not done in this case. The regulation requires disclosure of those authorized to act on behalf of the partnership. 43 CFR 3102.2-4(a)(3). Appellant was specifically advised by BLM letter of April 5, 1977, that all three partners were required to sign lease applications and that applications with only one signature would be rejected in the absence of a statement executed by all the partners providing otherwise.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge